

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No. : 10/720,948 Confirmation No. 5271  
Appellant : Paul R. Gagnon  
Filed : November 24, 2003  
TC/A.U. : 3711  
Examiner : Mitra Aryanpour

Docket No. : 03-482  
Customer No. : 34704

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

APPEAL BRIEF

Sir:

This is an appeal to the Board of Patent Appeals and Interferences from the rejection of claims 1 - 22, dated September 20, 2007 made by the Primary Examiner in Group Art Unit 3711.

REAL PARTY IN INTEREST

The real party in interest is the inventor Paul R. Gagnon.

RELATED APPEALS AND INTERFERENCES

There are no pending appeal, interferences or judicial proceedings known to Appellant, or Appellant's legal representative, which may be related to, directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

There is a prior decision by the Board in this application. The Board is referred to Appeal No. 2006 - 1562 and the decision mailed on August 24, 2006.

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### STATUS OF CLAIMS

Claims 1 - 22 are pending in the application and are on appeal. An appendix containing the claims on appeal is attached hereto.

### STATUS OF AMENDMENTS

No amendment has been filed since the rejection which is being appealed.

A pre-appeal brief request was filed on December 14, 2007. On January 29, 2008, a notice of panel decision was mailed which concluded that there was at least one issue for appeal.

### SUMMARY OF CLAIMED SUBJECT MATTER

The claims on appeal relate to a sports vision training device (10) (see FIGS. 1 - 3, 4A, 4B, 5 and 6) for directing an individual's field of vision up and toward the field of play and for restricting the individual's field of vision with regard to a sports object, such as a ball, puck, etc., being controlled by the individual. See page 1, lines 4 - 8 of the specification.

As set forth in independent claim 1, the sports vision training device (10) comprises a piece of material having a thickness (H) sufficient to interfere with an individual's ability to look in a specific direction at a sporting object being controlled by the individual. (See page 4, paragraph 0022, of the specification). The piece of material has an adhesive coating or layer (22) (see FIG. 4A) for positioning the piece of a material. The piece of material is positioned beneath an individual's eye without the piece of material interfering with the individual's ability to look at the sporting object while attempting to control the sporting object due to the thickness while the piece of material allows the individual to look

forward and up without any vision obstruction. See page 4, paragraph 0021, of the specification.

As set forth in claim 2, the piece of material has a thickness (H) sufficient to direct the individual's vision up and toward the field of play and players on the field of play. (See page 4, paragraph 0022, of the specification.)

As set forth in claim 3, the piece of material (20) is formed from an open-cell foam material. (See page 4, lines 5 - 9, of the specification.)

As set forth in claim 4, the adhesive coating or layer (22) includes means for absorbing moisture and for transferring the moisture from a surface of an individual's skin to the piece of material to allow the moisture to evaporate. (See page 4, paragraph 0021, of the specification.)

As set forth in claim 5, the moisture absorbing and transferring means comprises a hydrocolloidal material incorporated into the adhesive layer. (See page 4, paragraph 0021, of the specification.)

As set forth in claim 6, the piece of material has an upper surface and the upper surface is intermittently grooved to permit momentary glances at said sports object (30) (see FIG. 6) (see page 4, paragraph 0023, of the specification).

As set forth in claim 7, the piece of material may have written indicia on an upper surface. (See page 4, paragraph 0025, of the specification.)

As set forth in claim 8, the piece of material may have a logo on an upper surface. (See page 4, paragraph 0025, of the specification.)

As set forth in claim 9, the sports vision training device is disposable. (See page 2, paragraph 0007, of the specification.)

Claim 10 is an independent claim directed to a system for training an individual encouraging them to look up and forward while playing a sport without looking down at an object being controlled by the individual. The system comprises a pair of potentially disposable view restricting members (10). Each member (10) is adhesively applied to one of the cheeks under an eye of the individual without covering any portion of said eye and without interfering with the individual's ability to see in upward and forward directions. Each member (10) has an upper edge positioned beneath the eye and a thickness (H) sufficient to interfere with the individual's vision if the individual attempts to look down and sufficient to encourage the individual to look in the up and forward directions towards a field of play and at least one player on the field of play. (See FIGS. 1 - 3, 4A, 4B, 5 and 6 of the drawings and page 2, paragraph 0010, of the specification.)

As set forth in claim 11, each member has a first layer (20) formed from an open-cell foam material. (See page 4, paragraph 0021, of the specification.)

As set forth in claim 12, each member has an adhesive coating or layer (22) for holding the member to a respective cheek of the individual. The adhesive coating or layer abuts a surface of the first layer. (See FIG. 4A of the drawings and page 4, paragraph 0021, of the specification.)

As set forth in claim 13, the adhesive coating or layer (22) contains a hydrocolloidal material for absorbing moisture and for transferring the moisture from a surface of a respective cheek to the first layer for evaporation into the atmosphere. (See page 4, paragraph 0021, of the specification.)

As set forth in claim 14, each member may have an upper surface and intermittently spaced grooves (30) in the upper

surface (see FIG. 6 of the drawings and page 4, paragraph 0023, of the specification), or with a narrow stem (40) (see FIG. 5 of the drawings and page 4, paragraph 0023, of the specification) at the base of which is the adhesive, for allowing momentary glances downwardly at the sports object being controlled by the user.

As set forth in claim 15, the system further comprises vision restriction devices (10) attached to the individual's face along side each eye to restrict the individual's peripheral vision. (See page 4, paragraph 0026 of the specification.)

As set forth in claim 16, each of the vision restriction devices comprises a first layer (20) formed from an open cell material and a second adhesive coating or layer (22) for adhering the vision restriction device to the individual's face. (See page 4, paragraphs 0021 and 0026, of the specification.)

As set forth in claim 17, the adhesive coating or layer (22) has a hydrocolloidal material incorporated therein. (See page 4, paragraph 0021, of the specification.)

Claim 18 is an independent claim and is directed to a method for training an individual playing a sport. The method comprises the steps of providing at least one member (10) having an upper edge, an adhesive coating or layer (22) and a thickness (H) sufficient to interfere with the individual's field of vision and positioning the at least one member (10) on at least one cheek under an eye of the individual in a position where said upper edge is beneath the eye and which does not cover any portion of said eye so that the thickness interferes with the individual's ability to look downwardly at a sports object being controlled by the individual and to restrict the individual's field of vision to looking forward up and towards a field of play and at least one person on the field of play. (See page 2,

paragraph 0011, of the specification; also see FIG. 1, 2, 4A, and 6.)

As set forth in claim 19, the sports vision training device according to claim 1 further comprises the piece of material having a narrow stem at the base of which is the adhesive. (See page 4 of the specification, paragraph 0023, second line, and FIG. 5).

As set forth in claim 20, the sports vision training device according to claim 1, further comprises the material having a thickness of at least one quarter inch. (See page 4 of the specification, paragraph 0022, last line.)

As set forth in claim 21, the sports vision training device of claim 1 further comprises the piece of material being positioned so as to enable at least partial view of the sporting object being controlled by an individual at a point equal to 20 degrees relative to the individual's vertical field of vision. (See page 3 of the specification, last four lines.)

As set forth in claim 22, the sports vision training device of claim 1 further comprises the piece of material being positioned so as to enable at least partial view of said sporting object being controlled by the individual at a point less than 20 degrees relative to the individual's vertical field of vision. (See page 3 of the specification, last four lines.)

The sports training device of the present invention is advantageous in that it is lightweight and can be easily applied. Further, it absorbs moisture from the wearer's skin and allows it to evaporate to the environment. Still further, the use of the hydrocolloidal material in the adhesive layer helps prevent rapid loss of adhesive strength and helps prevent skin rash or trauma to the skin upon removal of the device. Most importantly, the sports training device of the present invention

encourages play with a desired head and eyes up orientation.  
(See page 4, paragraph 0024, of the specification.)

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are as follows:

(1) The rejection of claims 1, 2, 7 - 10, 15, 18, 20 - 22 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,320,094 to Arnold;

(2) The rejection of claims 3 - 6, 11 - 14, 16, 17, and 19 under 35 U.S.C. 103(a) as being unpatentable over Arnold in view of U.S. Patent No. 4,951,658 to Morgan et al.; and

(3) The rejection of claim 18 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,719,909 to Micchia et al. in view of Arnold.

#### ARGUMENT

##### *(a) Patentability of Independent Claim 1*

Claim 1 has been rejected on anticipation grounds over the Arnold patent. In order to anticipate a claim, the reference must expressly or inherently describe each and every limitation set forth in the claim. See *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). An anticipating reference must describe the subject matter in the claim with sufficient clarity and detail to establish that the subject matter existed in the prior art and that such existence would be recognized by persons of ordinary skill in the field of the invention. See *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

Claim 1 is allowable over Arnold because Arnold does not disclose, either expressly or inherently, a piece of material

positioned beneath an individual's eye "without said piece of material covering any portion of said eye so that said piece of material interferes with said individual's ability to look at said sporting object while attempting to control said sporting object due to said thickness while said piece of material allows said individual to look forward and up without any vision obstruction." An eye patch such as Arnold's is intended to fully cover the eye during a medical procedure and as a result obstructs all vision. Thus, an individual wearing it can not look forward and up without any vision obstruction. In fact, in the case of Arnold's eye patch, the eye patch contacts the wearer's eyelid. As a result, the wearer can not look forward and up. See column 3, lines 23 - 33 of Arnold. Still further, Arnold's eye patch is applied with the wearer's eye and eyelid closed. See column 4, lines 13 - 15.

Claim 1 as written, as well as claims 10 and 18 to be discussed hereinafter, takes into account comments made by this Board in its decision of August 24, 2006. On page 10 of that decision, this Board stated that Claim 1 does not prohibit a complete blocking of an individual's vision using the device. The Board then went on to state that Arnold appears to anticipate claim 1 then on appeal.

Appellant has since amended claim 1, and claims 10 and 18, in light of the Board's comments to say that the piece of material positioned beneath an individual's eye does not cover any portion of the eye. Such language precludes an eye patch such as Arnold's. The claim goes on to say that the piece of material interferes with the individual's ability to look at the sporting object while attempting to control the sporting object while the thickness of the material allows the individual to look forward and up without any vision obstruction. The eye



patch in Arnold is made of a material which has a thickness; however, the material and its thickness does not allow the individual to look forward and up without any vision obstruction. Arnold's eye patch completely covers the eye of a patient during a medical procedure and clearly obstructs all the vision of the wearer when it is used as described in the Arnold patent.

The Examiner in making the rejection contends that Arnold has sufficient thickness to satisfy the claimed vision-interfering function of claim 1. This simply is not true. Since Arnold's eye patch covers the entire eye and only allows limited movement of the eyelid, it blocks the vision of the user. The thickness has nothing to do with this function. Further, the thickness of the material forming Arnold's eye patch does not allow the individual to look forward and up without any vision obstruction.

With regard to the Examiner's inherency comments concerning claim 1, please see Appellant's argument with respect to claim 10. The same argument presented therein is applicable here.

For these reasons, independent claim 1 is not anticipated by Arnold.

*(b) Patentability of Independent Claim 10*

Claim 10 is directed to a system for training an individual encouraging them to look up and forward while playing a sport without looking down at an object being controlled by the individual. The system comprises a pair of potentially disposable view restricting members. Each member is adhesively applied to one of the cheeks under an eye of the individual without covering any portion of the eye and without interfering with the individual's ability to see in upward and forward

directions. Further, each member has an upper edge positioned beneath the eye and a thickness sufficient to interfere with the individual's vision if the individual attempts to look down and sufficient to encourage the individual to look in the upward and forward directions towards a field of play and at least one player on the field of play.

Independent claim 10 is not anticipated by Arnold for the following reasons. First, the claim calls for a system having a pair of potentially disposable view restricting members. Arnold discloses a single eye patch. The reference does not disclose a pair of eye patches being worn at the same time. Second, claim 10 calls for "each said member being adhesively applied to one of the cheeks under an eye of said individual without covering any portion of said eye and without interfering with the individual's ability to see in upward and forward directions." It is submitted that the eye patch taught by Arnold completely covers the eye and thus covers at least a portion of the eye and interferes with the individual's ability to see in upward and forward directions. Third, claim 10 calls for each member to have an "upper edge positioned beneath the eye." Arnold's upper eye patch edge is not positioned beneath the eye. If it were positioned in this location, it would not function as an eye patch. Arnold's upper edge is located "above" the eye. That is the only way, the eye patch can carry out its function.

Still further, while Arnold's eye patch may have a thickness which interferes with the individual's vision if the individual attempts to look down, Arnold's eye patch material does not have a thickness which encourages the wearer to look in upward and forward directions towards a field of play and at least one player on the field of play. Arnold's eye patch material blocks all vision. A wearer of the Arnold eye patch

can not see the field of play and/or any player on it. The material does not in any way encourage the wearer to look upward and forward because the wearer has no vision whatsoever.

With regard to the Examiner's contention that the placement of the claimed material on the cheek is an intended use, this contention is wrong. The claim is a system claim which calls for the precise positioning of member on the cheek. The fact that the member has an upper edge in the located beneath the eye is a structural limitation and not an intended use. The claim limitations are directed specifically to the structure and functional capability of the device.

The Examiner states on page 3 of the rejection: "Arnold's patch reasonably appears to be capable of being applied, via its adhesive, on a cheek under an eye of the user. The patch, so positioned, would inherently interfere with the user's vision as claimed since the patch has the same thickness and would be at the same location as applicant's claimed device. Additionally, when the patch is so positioned it allows the piece of material to look forward and/or up." This position is erroneous for a number of reasons.

First, there is no disclosure in Arnold of using the eye patch in the claimed manner. Thus, Arnold does not expressly anticipate the claimed invention. The fact of the matter is that one would not use Arnold's eye patch in the claimed manner because one could not protect the wearer's eye. See claim 1 of Arnold which calls for "a disposable eye patch for covering a human eye." Also see column 3, lines 25 - 33 of Arnold which says that the eye patch contacts the patient's eyelid.

Second, with regard to the Examiner's inherency argument, the Examiner ignores the Board's previous decision which stated that:

"A rejection based upon the doctrine of inherency requires an examiner to provide a basis-in-fact and/or technical reasoning to reasonably support a determination that the allegedly inherent characteristics necessarily flows from the teachings of the applied prior art. *Ex parte Levy*, 17 USPQ2d 1461, 1463-1464 (BPAI 1990). Moreover, inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981)."

As before the Examiner has not met her initial burden of establish that Arnold inherently discloses the claimed "thickness" limitation. The Examiner merely provides the conclusory statement that the patch, so positioned, would inherently interfere with the user's vision as claimed since the patch has the same thickness. The Examiner has provided no explanation or technical line of reasoning as to why someone would place Arnold's patch in the claimed position. The fact of the matter is that no one of skill in the art using the Arnold patch would position it beneath the eye because by doing so, one could not carry out the eye protection function of the Arnold patch. At best, the Examiner's position is one of a very remote possibility. As noted above, one can not establish inherency by a possibility.

The Examiner's statement at the top of page 3 should not go unnoted. She says: "[b]ecause the patch thickness disclosed by Arnold may be (emphasis added) the same as disclosed by applicant, it is reasonable to consider Arnold's eye patch as inherently capable of performing applicant's vision-interference

functions recited in claims 1 and claim 10." Thus, the Examiner's inherency argument is based solely on speculation and a remote possibility.

For these reasons, claim 10 is not anticipated by Arnold.

*(c) Patentability of Independent Claim 18*

Claim 18 is directed to a method for training an individual playing a sport. The method comprises the steps of providing at least one member having an adhesive coating or layer and a thickness sufficient to interfere with the individual's field of vision and positioning the at least one member on at least one cheek under an eye of the individual so that the thickness interferes with the individual's ability to look downwardly at a sports object being controlled by the individual and to restrict the individual's field of vision to looking forward up and towards a field of play and at least one person on the field of play.

The patentability of a method claim is determined by the novelty and unobviousness of the claimed method steps. It is submitted that Arnold does not anticipate the claimed method because Arnold does not perform any of the claimed method steps. One using Arnold's eye patch as disclosed by Arnold does not, and would not, perform the step of "positioning said at least one member on at least one cheek under an eye of said individual in a position where said upper edge is beneath said eye and which does not cover any portion of said eye so that said thickness interferes with the individual's ability to look downwardly at a sports object being controlled by the individual and to restrict said individual's field of vision to looking forward and up towards a field of play and at least one person on said field of play."

Arnold's eye patch is used by medical practitioners during medical procedures to protect the eye. To accomplish this goal, Arnold's eye patch is positioned completely over the eye and the eyelid of the patient so that its upper edge is located above the eye. If the eye patch were positioned so that the upper edge was below the patient's eye, the protection function could not be accomplished. Still further, Arnold's eye patch covers the entire eye and only allows limited movement of the eyelid. One wearing Arnold's eye patch can not look forward and up towards a field of play and/or see at least one person on said field of play. In fact, Arnold's eye patch is not designed to be worn on a field of play. It is designed for use in a medical setting only.

With respect to the Examiner's contention that because Arnold's eye patch may have the same thickness as disclosed by Appellant, it is reasonable to consider Arnold's eye patch as inherently being capable of performing applicant's vision-interference function recited in claim 18, Appellant submits that the Examiner has drawn the wrong conclusion. The Examiner misses the point that the claimed invention is a method for training an individual playing a sport which requires the aforementioned positioning step. The Examiner offers no technical line of reasoning or explanation as to why it is inherent in Arnold that such a step be performed when in fact Arnold teaches away from performing this method step. Arnold contains absolutely no teachings or suggestions as to how to use the disclosed eye patch in a training method for athletes. It should also be noted that despite its thickness, the fact remains that the Arnold eye patch when used as taught by Arnold completely blocks the vision of the eye over which it is placed. Thus, it is incapable of performing the vision-interference

function in the manner set forth in the claim. The material in Arnold is incapable of allowing a user to look forward and up without blocking the user's vision. The Examiner's suggestion that the Arnold eye patch could be used in the manner set forth in the claim finds no basis in Arnold. While it may be a possibility, inherency can not be based upon mere possibilities.

With respect to any argument that the positioning of the vision training device on the cheek is an intended use of the device, this argument fails to take into account that Appellant is claiming a training method and the positioning of the member is essential to the method and thus has patentable significance.

*(d) Patentability of Claims 2, 7 - 9,  
15 and 20 - 22*

Claim 2 states that the piece of a material has a thickness sufficient to direct the individual's vision up and toward the field of play and players on said field of play. While Arnold's eye patch has a thickness which may be the same as Appellant's, the thickness does not direct the individual's vision up and toward the field of play and players on said field of play. This is because Arnold's eye patch with its material completely covers the eye and only permits limited movement of the eyelid and the eye. The thickness of Arnold's material does not in any way direct the individual's vision up and toward the field of play and players on the field of play because it is positioned over the eye. Further, Arnold's patch is a medical safety device and is not intended to be used on a field of play.

Claim 7 is not anticipated by Arnold for the reasons previously expressed with regard to claim 1 and because there is no disclosure of the material having written indicia on an upper surface.

Claim 8 is not anticipated by Arnold for the reasons previously expressed with regard to claim 1 and because there is no disclosure of the piece of material having a logo on an upper surface.

Claim 9 is allowable for the same reasons as claim 1.

Claim 15 is not anticipated by Arnold for the same reasons as claim 10 and further because Arnold does not disclose having vision restriction devices attached to an individual's faces along side each eye to restrict the individual's peripheral vision. Arnold only teaches using a single eye patch. No additional vision restriction devices are provided for blocking peripheral vision because they are not needed since the eye patch completely covers the eye.

Claim 20 is allowable for the same reasons as claim 1.

Claims 21 and 22 are not anticipated by Arnold because there is no disclosure of the piece of material being positioned so as to enable at least partial view of said sporting object at a point equal to (claim 21) or less than (claim 22) 20 degrees relative to the individual's vertical field of vision. Arnold's eye patch is designed to protect the eye during a medical procedure. The Examiner's argument about intended use fails because the positioning of Appellant's member is essential to the operation of the device. There is no question that Arnold's eye patch does not and can not meet the limitations set forth in claims 21 and 22. Arnold would not want to meet these limitations. The limitations in claims 21 and 22 are specifically related to the structure of the piece of material, i.e. its thickness, and its positioning relative to the eye. It is simply wrong for the Examiner to ignore these facts.

*(e) Claims 3 - 6, 11 - 14, 16,*



*17 and 19 Are Patentable Over The  
Combination of Arnold and Morgan et al.*

With respect to the rejection of claims 3 - 6, 11 - 14, 16, and 17 on obviousness grounds, these claims are allowable for the same reasons as their parent claims. The secondary reference does not cure the aforementioned deficiencies of Arnold.

Further, with respect to claims 3, 11, and 16, it is submitted that one of ordinary skill in the art would not want to form Arnold's eye patch from an open-cell foamed material. Arnold's eye patch is intended to be used in procedures where aluminum-oxide crystals are discharged from a wand onto a patient's face. If one were to use an open-cell foamed material, the crystals could become trapped with the open-cells and cause unwanted problems. Still further, the purpose of Arnold's eye patch is to protect the eye during procedures which include abrasion systems, chemicals, air jets, air streams, and liquids. (See column 1, lines 21 - 26). Open-cell foamed materials would not provide the desired level of protection. Thus, one of skill in the art would not make the proposed modification to use Morgan et al.'s open cell foam material.

With respect to claims 4, 5, 12, 13, and 17, it is submitted that one of ordinary skill in the art would not modify Arnold's eye patch to include an adhesive layer which has a means for absorbing moisture and for transferring the moisture from a surface of the individual's skin to the piece of material to allow the moisture to evaporate. Arnold's eye patch is intended to protect a person's eye during a medical procedure. Allowing moisture to be transferred to the piece of material covering the eye would increase the weight of the material until such time as the moisture evaporates and make the patient's eye

uncomfortable. There is no reason to include Morgan's hydrocolloidal material into Arnold's adhesive layer.

With respect to claim 6, there is absolutely no reason to groove any portion of the upper surface of Arnold's material so as to permit momentary glances at the sports object. Arnold's eye patch does not allow the wearer to have any vision out of the covered eye. Providing an upper surface with the claimed grooves serves no useful purpose. Therefore, one of ordinary skill in the art would not make such a modification.

With respect to claim 14 and the claimed grooves, Appellant incorporates the same comments as before with regard to claim 6. With respect to the narrow stem portion of claim 14, there is no reason to provide Arnold's eye patch with such a stem. Arnold is trying to maximize the area of the face available to the medical practitioner. Adding the narrow stem portion defeats this purpose. Therefore, one of ordinary skill in the art would not make this modification. With regard to Morgan et al., the secondary reference does not disclose the claimed stem portion.

With respect to claims 16 and 17, these claims are allowable for the same reason as claim 15. Both Arnold and Morgan et al. do not disclose the claimed vision restriction devices attached to an individual's face along side each eye. The only thing that Arnold and Morgan et al. disclose is an eye patch which goes over the eye, not along side it. Since both Arnold and Morgan et al. do not disclose the vision restriction devices, they could not possibly disclose the subject matter of claims 16 and 17.

With respect to claim 19, Appellant incorporates the foregoing comments about the stem given in connection with claim 14.

*(f) Claim 18 Is Not Rendered Obvious  
By the Combination of Micchia et al. and Arnold*

With regard to the rejection of claim 18 over the combination of Micchia et al. in view of Arnold, this Board has previously determined that Micchia et al. does not teach or suggest the sufficient thickness limitation. To raise the contention that it does is to completely ignore the Board's decision which is not within the Examiner's purview. The Examiner is bound by the Board's determination on this issue. As noted above, Arnold is directed to an eye patch which completely blocks the vision of the eye over which it is placed. Thus, Arnold is incapable of teaching the claimed sufficient thickness limitation. Thus, even if one of ordinary skill in the art were to combine the references in the manner suggested by the Examiner, they still would not arrive at the subject matter of claim 18.

The rejection also fails because the Examiner has not pointed out where the references teach or suggests the *method steps* set forth in claim 18. Neither references teaches the step of "positioning said at least one member on at least one cheek under an eye of said individual in a position where said upper edge is beneath the eye and which does not cover any portion of said eye so that said thickness interferes with the individual's ability to look downwardly at a sports object being controlled by the individual and to restrict said individual's field of vision to looking forward and up towards a field of play and at least one person on said field of play." Neither reference is directed to a method for training an individual playing a sport. Still further, Arnold teaches covering the eye

to protect it and clearly teaches away from the claimed method step.

For these reasons, claim 18 is allowable over Micchia et al. and Arnold.

#### CONCLUSION

For the foregoing reasons, the Board is hereby requested to reverse the rejection of claims 1 - 12 and remand the application to the Primary Examiner for allowance and issuance.

#### FEES

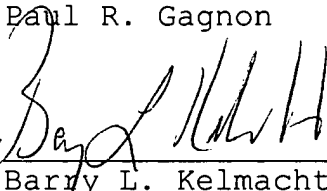
A one-month extension of time and a check in the amount of \$315.00 is enclosed herewith for the extension of time fee and the appeal brief fee. Should the Director determine that

an additional fee is due, he is hereby authorized to charge said fee to Deposit Account No. 02-0184.

Respectfully submitted,

Paul R. Gagnon

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IN TRIPLICATE

Date: March 31, 2008

I, Nancy Reid, hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on March 31, 2008.

  
Nancy Reid

APPENDIX A - CLAIMS APPENDIX

1. A sports vision training device comprising:

a piece of material having a thickness sufficient to interfere with an individual's ability to look in a specific direction at a sporting object being controlled by the individual; and

said piece of material having an adhesive coating or layer for positioning said piece of material; and

said piece of material being positioned beneath an individual's eye without said piece of material covering any portion of said eye so that said piece of material interferes with said individual's ability to look at said sporting object while attempting to control said sporting object due to said thickness while said piece of material allows said individual to look forward and up without any vision obstruction.

2. A sports vision training device according to claim 1, wherein said piece of material has a thickness sufficient to direct the individual's vision up and toward the field of play and players on said field of play.

3. A sports vision training device according to claim 1, wherein said piece of material is formed from an open-cell foam material.

4. A sports vision training device according to claim 1, wherein said adhesive coating or layer includes means for absorbing

moisture and for transferring said moisture from a surface of an individual's skin to the piece of material to allow the moisture to evaporate.

5. A sports vision training device according to claim 4, wherein said moisture absorbing and transferring means comprises a hydrocolloidal material incorporated into said adhesive layer.

6. A sports vision training device according to claim 1, wherein said piece of material has an upper surface and said upper surface is intermittently grooved to permit momentary glances at said sports object.

7. A sports vision training device according to claim 1, wherein said piece of material has written indicia on an upper surface.

8. A sports vision training device according to claim 1, wherein said piece of material has a logo on an upper surface.

9. A sports vision training device according to claim 1, wherein said device is disposable.

10. A system for training an individual encouraging them to look up and forward while playing a sport without looking down at an object being controlled by said individual, said system comprising:

a pair of potentially disposable view restricting members;

each said member being adhesively applied to one of the cheeks under an eye of said individual without covering any

portion of said eye and without interfering with the individual's ability to see in upward and forward directions; and

each said member having an upper edge positioned beneath said eye and a thickness sufficient to interfere with said individual's vision if said individual attempts to look down and sufficient to encourage said individual to look in said upward and forward directions towards a field of play and at least one player on said field of play.

11. A system according to claim 10, wherein each said member has a first layer formed from an open-cell foam material.

12. A system according to claim 11, wherein each said member has an adhesive coating or layer for holding said member to a respective cheek of said individual, said adhesive coating or layer abutting a surface of said first layer.

13. A system according to claim 12, wherein said adhesive coating or layer contains a hydrocolloidal material for absorbing moisture and for transferring said moisture from a surface of said respective cheek to the first layer for evaporation into the atmosphere.

14. A system according to claim 13, wherein each said member has an upper surface and intermittently spaced grooves in said upper surface, or with a narrow stem at the base of which is the adhesive for allowing momentary glances downwardly at the sports object being controlled by the user.



15. A system according to claim 10, further comprising vision restriction devices attached to an individual's face along side each eye to restrict the individual's peripheral vision.

16. A system according to claim 15, wherein each said vision restriction device comprises a first layer formed from an open cell material and a second adhesive coating or layer for adhering the vision restriction device to the individual's face.

17. A system according to claim 16, wherein said adhesive coating or layer has a hydrocolloidal material incorporated therein.

18. A method for training an individual playing a sport, said method comprising the steps of:

providing at least one member having an upper edge, an adhesive coating or layer and a thickness sufficient to interfere with said individual's field of vision; and

positioning said at least one member on at least one cheek under an eye of said individual in a position where said upper edge is beneath said eye and which does not cover any portion of said eye so that said thickness interferes with the individual's ability to look downwardly at a sports object being controlled by the individual and to restrict said individual's field of vision to looking forward and up towards a field of play and at least one person on said field of play.

19. A sports vision training device according to claim 1, wherein said piece of material has a narrow stem at the base of which is the adhesive.

20. A sports vision training device according to claim 1, wherein said thickness is at least one quarter inch.

21. A sports vision training device according to claim 1, wherein said piece of material is positioned so as to enable at least partial view of said sporting object being controlled by said individual at a point equal to 20 degrees relative to the individual's vertical field of vision.

22. A sports vision training device according to claim 1, wherein said piece of material is positioned so as to enable at least partial view of said sporting object being controlled by said individual at a point less than 20 degrees relative to the individual's vertical field of vision.

APPENDIX B - EVIDENCE APPENDIX

NOT APPLICABLE

APPENDIX C - RELATED PROCEEDINGS APPENDIX

NOT APPLICABLE